

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Petition No.4492 of 2007

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Between:

Dr.S. Jeevananda Reddy

... Petitioner

And

Government of A.P., rep. by its
Principal Secretary, Municipal Administration
Department, Hyderabad and others.

... Respondents

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:: ORDER ::

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Counsel for the Petitioner:

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Shri K.S. Murthy

Counsel for Respondent No.1:

Government Pleader for
Municipal Administration

Counsel for Respondent Nos.2 & 3: Shri P. Rajagopal Rao

Counsel for Respondent No.4:

Shri S.V. Bhatt

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June 18, 2007
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Per G.S. Singhvi, CJ

This petition filed by Dr.S. Jeevananda Reddy for quashing the decision of the Andhra Pradesh Pollution Control Board (for short, 'the Board') to amend Condition No.10 of the Consent Order dated 2.6.2005 pertaining to the Outer Ring Road (for short, 'ORR') and for issue of a mandamus to respondent Nos.1 to 3 to maintain distance of 500 m. between the bund (2200 m. length) of Himayatsagar Lake and the ORR is the second round of litigation instituted by him in public interest in relation to the same subject matter.

The petitioner's credentials as a public spirited person have already been accepted by this Court by entertaining five writ petitions filed by him earlier. Therefore, we do not consider it necessary to repeat the same.

In Writ Petition No.22296 of 2006, the petitioner had prayed for restraining respondent Nos.1 to 3 from raising any construction pertaining to ORR within a distance of 500 m. of the tank bund (2200 m.) of Himayatsagar Lake. He relied on Clause 10 of Schedule-B appended to the Consent Order dated 2.6.2005 issued by the Board and claimed that no construction activity should be allowed within a distance of 500 m. from the bund of the lake. For the sake of convenient reference, that condition is reproduced below:

"10. The proponent shall develop greenbelt of width 500 m. between the bund and the road as committed vide letter dt.25.4.2005."

After detailed discussion, this Court vide its order dated 13.12.2006 disposed of the writ petition and gave the following directions:

- 1) Within seven days from today, the Board shall refer the entire issue relating to true interpretation of clause 10 of Schedule B appended to the consent order, which provides for development of green belt of 500 meters width between the bund and the road, to the technical committee, which had earlier examined the matter.
- 2) Within next seven days, the technical committee shall submit its report. While doing so, the technical committee shall examine the records produced by HUDA and also keep in view the restrictions contained in G.O.Ms.No.111, dated 8-3-1996.
- 3) The technical committee shall fix a date on which the petitioner and representative of HUDA may appear and submit their respective view points.
- 4) Within three days of the receipt of the report of the technical committee, the Board shall issue appropriate order clarifying the true ambit and scope of clause 10 of the consent order.
- 5) If the petitioner feels aggrieved by the order of the Board, he shall be free to avail appropriate legal remedy.

In compliance of the directions given by the Court, the Board reconsidered the matter and decided to amend Condition No.10. Accordingly, order No.APPCB/HYD/KTN/453/HO/2005/2323, dated 12.2.2007 was passed. Paragraphs 10 to 15 of that order read as under:

“10. Technical Committee (T.C) reviewed the information presented by the proponent on 22.1.2007 and opined as follows: “In pursuance of the recommendations of the Technical Committee made in its meeting held on 26.12.2006, the project proponent presented data on assessment of risk to the quality of water in Himayathsagar. Based on the data presented, the Committee found that the alignment of Outer Ring Road (ORR), Phase-I was less than 500 m. from the bund for a length of about half a kilometer out of its total length of 2200 m. of bund (a structure constructed to retain water in the lake). Further, the data did not support that the ORR could be located at a distance shorter than the prescribed distance of

500 m. between the ORR and the bund. In conclusion, therefore, the Committee recommends that a minimum distance of 500 m., as already suggested, should preferably be maintained.”

11. The contingency on which the condition of preferring to maintain a minimum width of 500 m. between the bund and the road has been recommended by the T.C was carefully considered by the Board. The Board examined the Risk Analysis Report prepared by Indian Institute of Chemical Technology (IICT) and Environment Protection Training and Research Institute (EPTRI) for HUDA on accidents during transportation of hazardous chemicals on outer ring road along the stretch of Himayatsagar lake and noted that:

- a) The frequency of occurrence of accidents / spillage is very less (i.e. 5×10^{-6} /year for atmospheric vessels and 3×10^{-6} /year for pressure vessels) in the event of an accident during transportation of hazardous chemicals on ORR in the stretch near to Himayatsagar lake.
- b) The heat radiation and over pressure evolved due to catastrophic failure of any chemical will not affect the existing bund near to the ORR.
- c) The most predominant wind directions are from NW to SE, SW to NE and West to East. The maximum probability i.e. 90% of time the wind directions are from Himayatsagar Lake towards city side. In case of any toxic gas release, the gas cloud will move towards city side.
- d) The actual distance of 370-500 m. between the ORR alignment and Himayatsagar water body does not play any significant role as the safe distance is about 65 km.
- e) The IDLH damage distances are crossing 500 m. in case of chlorine, ammonia, Hydrogen Fluoride and LPG tonners for which the ORR authorities will be equipped to act during emergencies in case of any toxic gas releases.

12. The requirement of maintaining minimum width between ORR and the bund has been considered by MoEF,

Government of India and after considering relevant aspects in this behalf, the said authority while issuing environmental clearance dated 20.10.2005 prescribed maintenance of minimum gap of 500 m. between ORR and the bund for a length of 1400 m. The Board has also considered the necessity to have conformity and avoid ambiguity with regard to maintenance of width between ORR and the bund and the length of proposed ORR.

13. The technical inputs made available by the proponent as supported and recommended by Indian Institute of Chemical Technology (IICT) clearly indicate that the minimum width of 500 m. is not an absolute requirement. The remoteness of the occurrence of an accident, a rare phenomenon, shall not be taken into consideration for calling upon the proponent to invariably or inevitably maintain a minimum width of 500 m. all along the bund.

14. Keeping due consideration to the documents, reports, technical committee recommendations, petitioner's objections and contests by the proponent and the nature of pollution, the project is likely to cause in normal circumstances and in abnormal circumstances like accidents etc. and to have conformity between Environmental Clearance of MoEF vis-à-vis CFE of the Board dated 02.06.2005, the Board defined the ambit and scope of the said condition as follows:

"The proponent shall maintain a minimum width of 500 m. along the bund upto a length of 1400 m. and shall also maintain minimum width of 365 m. along the remaining length of the bund. The proponent shall develop greenbelt between the bund and the road and shall take the extra caution of developing thick greenbelt in the remaining length where minimum width between the bund and the road is varying from 365 m. to 500 m. to act as wind barriers and preserve the water body from remote contingencies."

15. In view of the above, the CONDITION NO.10 UNDER SCHEDULE-B OF CONSENT FOR ESTABLISHMENT issued vide reference 1st cited is amended as follows with all

other conditions stipulated in the reference 1st cited remaining the same:

“The proponent shall maintain a minimum width of 500 m. along the bund upto a length of 1400 m. and shall also maintain minimum width of 365 m. along the remaining length of the bund. The proponent shall develop greenbelt between the bund and the road and shall take the extra caution of developing thick greenbelt in the remaining length where minimum width between the bund and the road is varying from 365 m. to 500 m. to act as wind barriers and preserve the water body from remote contingencies.”

The petitioner has questioned the aforesaid decision of the Board on the ground of violation of the rules of natural justice and arbitrary exercise of power. He has pleaded that amendment of Condition No.10 of the Consent Order is contrary to the direction given by the Court in Writ Petition No.22296 of 2006 and is an attempt to over-reach the order of the Court. In the affidavit filed by him, the petitioner has emphasized that the technical committee, to whom the matter was referred by the Board, had unequivocally opined that the restriction of 500 m. should be maintained qua the entire length of the bund measuring 2200 m. and pleaded that the contrary decision taken by the Board should be declared nullity.

The case set up by respondent Nos.2 and 3 is that in terms of environment clearance given by the Ministry of Environment and Forests, Government of India, the restriction of 500 m. distance is limited to 1400 m. length of the bund and not the entire length of more than 2200 m. In the affidavit filed on their behalf, it has been averred that Condition No.10 of the Consent Order has been amended by the Board after due consideration of the entire material including the recommendations of the technical committee.

Shri Rajeshwar Tiwari, Member Secretary has filed counter-

affidavit on behalf of the Board. In paragraph 6 of his affidavit, Shri Tiwari has averred as under:

“6. The recommendations of the Technical Committee have been placed before the CFE clearance committee in the meeting held on 24.1.2007. The Consent for Establishment Committee decided to refer the issue of proposed clarification for due consideration by Board with a view to facilitate objective assessment/decision in the matter through its decision dt.24.1.2007. Meeting of Board was convened on 07.2.2007 to consider two issues, both of them having bearing on implementation of G.O.Ms.No.11, dt.08.3.1996. It is respectfully submitted that this respondent Board is committed to implement GO Ms.No.111, dt.08.3.1996 and in the process has not issued C.F.E./C.F.O. to any Pollution Potential Industry / Establishment in 10 kms. FTL of lakes for the past several years. The subject project is a High Way Road Project located on the downstream of Himayat Sagar.

The following materials / documents have been placed before the Board for decision in this behalf.

- a. GO Ms.No.111, dated 08.3.1996 and the Supreme Court orders dated 01.12.2000.
- b. CFE application alongwith EIA report.
- c. Public hearing minutes.
- d. The correspondence between the proponent and the Board.
- e. The Technical Committee minutes.
- f. The CFE committee minutes and CFE order dated 02.6.05
- g. Environmental clearance of MoEF dated 20.10.2005.
- h. The alignment of ORR road and the gap between the ORR and the bund of Himayatsagar.
- i. Risk analysis study of EPTRI and IICT in the event of an accident during transportation of hazardous chemicals.

Keeping due consideration to the documents, reports, technical committee recommendations, petitioner's objections and contentions of the proponent and the nature of pollution the project is likely to cause in normal circumstances and in events like accidents etc. and to the condition of MoEF in Environmental Clearance, the Board in its ultimate analysis of the matter defined the ambit and scope of clause 10 of Schedule-B of the CFE order as follows:

“The proponent shall maintain a minimum width of 500 m. along the bund upto a length of 1400 m. and shall also maintain minimum width of 365 m. greenbelt between the bund and the road and shall take the extra caution of developing thick greenbelt in the remaining length where minimum width between the bund and the road is varying from 365 m. to 500 m., to act as wind barriers and preserve the water body from remote contingencies.”

The above decision has been weighed by following considerations:

- a. The matter relates to maintenance of distance between Outer Ring Road and Himayat Sagar Bund.
- b. The High Way Project is positioned on the down stream of Himayat Sagar Lake.
- c. G.O.Ms.No.111, dated 08.3.1996 is clear in its applications to areas vis-à-vis industries/establishments etc.
- d. The risk analysis report prepared by IICT and EPTRI refers to most probable worst scenario, in case of an accident involving release of toxic volatile substances.
- e. The condition of environmental clearance of Ministry of Environment and Forests, Govt., of India reads as follows:

“To protect the Himayatsagar lake from the possibility of pollution from the developments/habitation HUDA should declare the stretch of proposed ORR from downstream side of lake bund as no development zone in the 500 m. gap between ORR and bund for a length of 1400 m. Necessary action should be initiated to incorporate the above condition in the Master Plan of HUDA.”
- f. To keep the conditions operating in the same area uniform.
- g. There is no statutory prohibition or guideline prescribing definite distance between the Bund and the proposed road under environmental laws. Precautionary principle is followed by requiring maintenance of reasonable distance.
- h. With a view to ensure prevention of environmental pollution, the proponent has been directed to develop thick density trees, which will act as barriers in normal and contingent occasions.
- i. The Board was satisfied with the technical details made

available by the proponent of the Project. It is contextual to state that while granting environmental clearance, the distance of Bund has been confined to 1400 meters.

- j. The decision making process of the Board is based on relevant materials and for sustainable development. The unsustainable objections of the petitioner are totally out of context and have been made in tandem only for the purpose of the writ prayer. These allegations in the affidavit under reply are totally devoid of merit and are liable to be rejected.

The petitioner has filed rejoinder affidavit to reiterate his plea that amendment of Condition No.10 of the Consent Order is vitiated by arbitrariness and mala fides.

During the pendency of the writ petition, the parties filed several additional affidavits reiterating their respective stand. Along with his affidavit dated 6.6.2007, Shri A. Suresh Babu, Executive Engineer, ORR has placed on record copies of the following documents:

1. Proceedings dt. 20.10.2005
2. Letter of Project Director dt.04.7.2005
3. Letter of Project Director dt.2.8.2005
4. Letter of Project Director dt.3.8.2005
5. Letter of Project Director dt.12.8.2005
6. Proceedings dt.31.8.2005
7. Letter of the Project Director dt.30.9.2005

Shri K.S.Murthy, learned counsel for the petitioner argued that the decision of the Board to modify Condition No.10 is influenced by extraneous reasons/factors and, therefore, the same is liable to be annulled. He emphasized that the exercise undertaken by the Board in the purported compliance of the order passed in Writ Petition No.22296 of 2006 was motivated and pre-determined and all the substantive objections raised by the petitioner against construction of ORR within 500 m. of the total length of the bund of Himayatsagar Lake were ignored by the respondents. Learned counsel submitted

that the condition incorporated in the order issued by the Ministry of Environment and Forests, Government of India cannot be treated as conclusive of the total length of bund of the lake and the Board was duty bound to independently consider the desirability of imposing restriction on the construction of ORR upto a distance of 500 m. of the entire length of the bund, which it has failed to do.

Shri Murthy submitted that the technical committee had recommended for maintaining the distance of 500 m. qua the entire length of the bund, which is more than 2200 m., but the Board arbitrarily ignored the same and modified Condition No.10.

Shri P. Rajagopal Rao, learned counsel for respondent Nos.2 and 3 and Shri S.V. Bhatt, learned counsel for the Board argued that if Condition No.10 incorporated in Schedule-B appended to Consent Order dated 2.6.2005 is read in conjunction with order dated 20.10.2005 issued by the Ministry of Environment and Forests, there remains no doubt that the Government of India has consciously restricted "No Development Zone" upto a length of 1400 m. of the bund of Himayatsagar Lake. They further argued that the clarification given by the Board about the true import of Condition No.10 cannot lead to an inference that the impugned decision is arbitrary or vitiated due to mala fides. Shri Bhatt laid considerable emphasis on the fact that before taking clarificatory decision, the Board had taken into consideration the objection raised by the petitioner and the recommendations made by the technical committee.

We have considered the respective submissions and carefully scrutinised the record. It is true that while disposing of Writ Petition No.22296 of 2006, this Court, prima facie, felt convinced that Clause 10 of the Consent Order had the effect of imposing restriction on the construction activity within 500 m. distance of the entire length of the bund and the environmental clearance given by the Ministry of

Environment and Forests could not impinge or dilute Clause 10, but, at that time, the Court did not have the advantage of considering the contents of application made by the Project Director, ORR for grant of consent, examination made by the expert committee constituted by the Ministry of Environment and Forests and the fact that 1400 m. length of the bund was consciously accepted by the Government of India for imposing restriction on the construction of ORR.

A careful scrutiny of application made by Project Director and Special Collector, ORR to the Ministry of Environment and Forests, Government of India shows that the concerned authority had shown alignment of the proposed ORR at a distance of 500 m. from Himayatsagar bund/lake. However, length of the bund was not indicated in any of the annexures filed with the application. After considering the application and documents produced by him, the concerned officer of the Ministry of Environment and Forests sent letter dated 31.8.2005 to the Project Director, ORR for submission of a detailed self-contained note. The relevant portions of that letter read as under:

“As you are aware, the above proposal was considered by the Expert Committee in its meeting held on 25th August, 2005. During the discussions, specific issues pertaining to mitigation measures related to Mrugavani National Park, Himayat Sagar Lake, selected alignment (No.2A), provisions for EMP and R & R package, settlement and land use pattern along and around the proposed ORR corridor etc. were raised.

The Committee has sought a detailed self-contained note on the plan of action to minimize the impact of these eco-sensitive systems as well as covering other issues mentioned above. Further, the project authorities had also submitted to the Committee that Sewerage Treatment Plant along with 500 m. wide greenbelt has been provided between lake and ORR as per the discussions with APPCB.

In view of the above, you are requested to furnish a

detailed note on all the above aspects to the Ministry for taking further necessary action at our end.”

In compliance of the direction contained in the aforementioned letter, Project Director submitted note dated 30.9.2005. Paragraph 2 of that note reads as under:

2. Himayatsagar lake

The proposed alignment of outer ring road is located with a minimum distance of 500 m. from the bund of Himayatsagar lake on downstream side. The main objections of the environmentalists and technical committee during public hearing with State Pollution Control Board was that there would be possibility of developments/habitations all along the ORR once the road is formed which ultimately leads to pollution of water body. Therefore, following strategy has been drawn to mitigate the above mentioned problems and protection of Himayatsagar lake.

- Declare the entire stretch of proposed ORR from downstream side of lake bund as no development zone in the 500 m. gap between ORR and bund for a length of 1400 m. Necessary action has been initiated to incorporate the above condition in the Master Plan of HUDA.
- The runoff from the road will be channeled downstream of the lake. The drainage in the area adjacent to the lake will also be connected to the downstream of the lake. The drainage and runoff from road will never join the lake directly.
- The alignment in the catchments area will be provided with adequate number of sediment and grease sediment trap to treat any spillage of oil if any.

Thereafter, the Ministry of Environment and Forests, Government of India granted clearance with a stipulation that HUDA should declare the stretch of proposed ORR from down stream side of lake/bund as “No Development Zone” in the 500 m. gap between ORR and bund for a length of 1400 m.

What the Board has now done is to clarify Condition No.10 in

the context of the clearance granted by the Ministry of Environment and Forests. The decision of the Board cannot be dubbed as arbitrary because it has taken into consideration the recommendations of the technical committee, risk analysis prepared by Indian Institute of Chemical Technology and Environment Protection, Training and Research Institute, as also the objections of the petitioner. The Court does not possess expert knowledge in this field. Therefore, it is not possible to substitute our opinion with that of the Board. The petitioner's plea that the Board should have accepted the report of the technical committee sounds attractive, but keeping in view the limitations of the scope of judicial review of such matters, we do not find it just and proper to sit in appeal over the decision taken by the Government of India and the Board.

There is another reason for our disinclination to interfere with the construction of ORR at this stage because, as per Shri P. Rajagopal Rao, 60% of the construction has been completed along the bund of Himayatsagar Lake, a fact which has not been controverted by the learned counsel for the petitioner.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.5722 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

June 18, 2007

C.V. NAGARJUNA REDDY, J

svs